

JPA File No.: 07-033 I
AG Contract No.: P001 2007 002094
Project No.: 092 CH 328.0
Project: Catchments for Mitigation
Section: SR 92 Carr Canyon Road –
Hunter Canyon
TRACS No.: H4596 01C
Budget Source Item No.: 12904

INTERGOVERNMENTAL AGREEMENT

BETWEEN
ARIZONA DEPARTMENT OF TRANSPORTATION
AND
ARIZONA GAME AND FISH COMMISSION

THIS AGREEMENT is entered into this date November 30th, 2007, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 11-951 through 11-954, as amended, between ARIZONA DEPARTMENT OF TRANSPORTATION ("ADOT") and the THE ARIZONA GAME AND FISH COMMISSION, hereinafter referred to as the "Commission." The terms "DEPARTMENT" and "DIRECTOR" in this Agreement shall mean the Arizona Game and Fish Department and its Director, acting as administrative agent for the Commission. ADOT and the Commission are collectively referred to as "Parties".

I. RECITALS

1. ADOT is empowered by A.R.S. § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of ADOT.

2. The Commission is empowered by A.R.S. § 17.231.B.7 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Commission.

3. Incident to a State road widening project on SR 92 between Carr Canyon Road and Hunter Canyon at approximately MP 328.0, ADOT and the Commission wish to mitigate animal mortality as a result of animal roadway crossings. Due to the pending road widening, the Parties are concerned that animal mortality will increase. The Commission will construct and maintain two (2) water catchments on the upstream side of the highway to reduce animal crossings while looking for water. ADOT will contribute an amount not to exceed \$100,000.00 to the Department for construction of the catchments, collectively hereinafter referred to as the "Project."

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 794154
Filed with the Secretary of State
Date Filed: 11/30/07
James K. Shumway
Secretary of State
By: [Signature]

II. SCOPE OF WORK

1. The Commission shall:

a. Advertise for bids and award one or more construction contract(s) to accomplish the Project. Administer the construction contract(s) executed to accomplish the Project, including making all payments to contractor(s).

b. Upon completion of the Project, invoice ADOT a lump sum amount not to exceed \$100,000.00 for costs associated to complete the Project. Request for payment shall be submitted using ADOT's Progress Payment Report form. Electronic forms can be requested through the Joint Project Administration, at the address provided in Section III.

c. Dedicate the aforementioned payment by ADOT toward the installation of water catchment devices. These catchment devices will be installed prior to the completion of SR 92 widening.

d. Install two water catchment devices on the upstream side of SR 92, approximately between MP 328 and MP 332. The DEPARTMENT will complete all necessary clearances required for device installation in coordination with the United States Forest Service, the Arizona State Land Department, and any other pertinent agencies.

e. Prepare a mitigation monitoring report to document Project completion, including post-construction photographs of the catchment devices.

f. Until the Project is completed, provide to ADOT an accounting of the monies expended for the Project on an annual basis.

g. Upon Project completion, provide routine and emergency maintenance of catchments.

2. ADOT shall:

a. Upon completion of the Project, and upon receipt and approval of invoices from the DEPARTMENT for the Project, remit to the DEPARTMENT a lump sum amount not to exceed \$100,000.00 for costs associated to complete the Project.

b. Provide access to the ADOT Progress Payment Report form to facilitate payments by ADOT to the DEPARTMENT.

c. Receive and approve the mitigation monitoring report from the DEPARTMENT, including any necessary changes or additions.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements provided herein. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to the other party. Should ADOT cancel during construction, costs incurred by the Commission will be reimbursed by ADOT. Should the Commission fail to maintain the Project, it is understood and agreed that ADOT shall not be obligated to maintain said Project as referenced herein.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

4. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes § 12-1518.

6. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation (ADOT)
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
(602) 712-7525
(602) 712-7424 Fax

Arizona Game and Fish Department
Attn: Joseph Currie
2221 W. Greenway Road
Phoenix, Arizona 85023
(602) 789-3867
(602) 789-3926 Fax

William Knight – EEG
1221 S. 2nd Ave., MD T100
Tucson, AZ 85713
(520) 388-4266

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Illegal Immigration: The parties agree to comply with Executive Order 2005-30, "Ensuring Compliance with Federal Immigration laws by State Employers and Contractors," the provisions of which are hereby incorporated by reference.

9. Non-Availability of Funds: Every payment obligation of the Parties under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds for the continuance of this Agreement are not allocated or are not available, this Agreement shall terminate automatically on the date of expiration of funding. In the event of such termination, the Parties shall incur no further obligation or liability under this Agreement other than for payment of services rendered prior to the expiration of funding.

10. Other Agreements: This Agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, or individuals.

11. Compliance with Applicable Law: All work performed pursuant to this Agreement shall be in compliance with all applicable state and federal laws and regulations.

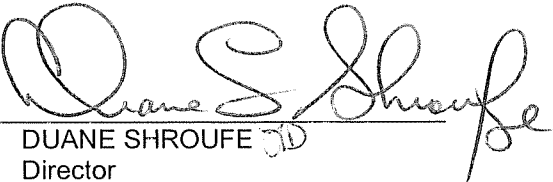
12. Severability: In the event that any such provision of this Agreement or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

13. Integration: This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter herein and accurately sets forth the rights, duties, and obligations of each Party. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions of this Agreement may be abrogated, modified, rescinded, or amended in whole or in part only by mutual written consent executed by the Parties.

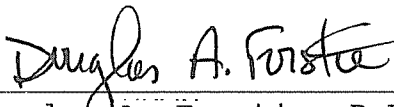
14. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each Party's legal counsel and that the Parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

ARIZONA GAME AND FISH DEPARTMENT

By 
DUANE SHROUFE
Director

**ARIZONA DEPARTMENT OF
TRANSPORTATION**

By 
Douglas A. Forstie, P.E.
Deputy State Engineer, Operations

G:\JPA 07-033 Arizona Game and Fish Department SR 92 catchments mitigation
Initial draft 4/27/07 ghc
Revised draft 5/23/07 ghc
Final Revision; discussion with G&F. 7/27/07 ghc
Revisions by AZGF 8/3/07 ghc
FINAL approved by AG 8/9/07 ghc

JPA 07-033

ATTORNEY APPROVAL FORM FOR THE ARIZONA GAME AND FISH COMMISSION

I have reviewed the above referenced Intergovernmental Agreement between the ARIZONA DEPARTMENT OF TRANSPORTATION and the ARIZONA GAME AND FISH COMMISSION, an Agreement among public agencies which has been reviewed pursuant to A.R.S. § 11-951 through § 11-954, and declare this Agreement to be in proper form and within the powers and authority granted to the ARIZONA GAME AND FISH COMMISSION under the laws of the State of Arizona.

No opinion is expressed as to the authority of ADOT to enter into this Agreement.

DATED this 6th day of November, 2007.

Shelley J. Cutler
Attorney for Arizona Game and Fish Commission

<p>TERRY GODDARD Attorney General</p>	 <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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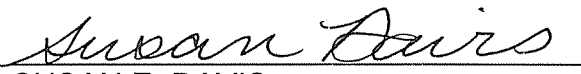
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007002094 (**JPA 07-033-I**), an Agreement between public agencies, i.e., Arizona Department of Transportation and Arizona Game and Fish Commission, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: November 26, 2007

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:96762
Attachment